

4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 247/2005

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet. OA-247/2005 Pg. 1 to 3
2. Judgment/Order dtd. 01/03/2007 Pg. 1 to 4 *disposed*
3. Judgment & Order dtd. Received from H.C/Supreme Court
4. O.A. 247/2005 Pg. 1 to 48
5. E.P/M.P. Pg. to
6. R.A/C.P. Pg. to
7. W.S. Pg. 1 to 10
8. Rejoinder. Pg. to
9. Reply. Pg. to
10. Any other Papers. Pg. to
11. Memo of Appearance.
12. Additional Affidavit.
13. Written Arguments.
14. Amendment Reply by Respondents.
15. Amendment Reply filed by the Applicant.
16. Counter Reply.

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 247/05

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(S): Dulal Chakrabarty

Respondant(S): U. O. I. 205

Advocate for the Applicant(S): U. K. Nair, B. Sarma, Anurag
Mr. B. Chakrabarty

Advocate for the Respondant(S): CASE

Notes of the Registry	Date	Order of the Tribunal
<p>The application is in form is filed/C.F. Rs. 20/- deposited vide P.D. No. <u>206/155-659</u> Dated <u>26.7.05</u></p> <p><u>Deep</u> Dy. Registrar</p> <p><u>25</u> <u>19.9.05</u></p>	<p>20.9.2005</p>	<p>Heard Mr. B. Sarma, learned counsel for the applicant and Ms. U. Das, learned Addl. C.G.S.C. for the respondents.</p> <p>Admit. Issue notice to the respondents. post on 11.11.2005.</p> <p><u>Vaigad</u> Vice-Chairman</p>
<p>Notice & order sent to D/section for issuing to resp. Nos. 1 to 5 by regd. A/D post and others BY Hand.</p> <p><u>25/10/05</u> D/No = 1530 to 1534 Dt = 27/10/05.</p> <p><u>10-11-05</u></p>	<p>11.11.2005</p>	<p>Learned counsel for the applicant is not present. Ms. U. Das, learned Addl. C.G.S.C. seeks for further time to file written statement. Post on 22.12.2005.</p> <p><u>Vaigad</u> Vice-Chairman</p>
<p>① Service report awaited.</p> <p><u>25</u></p> <p>② Service report awaited.</p> <p>③ No. W/S has been filed.</p> <p><u>25</u> <u>21.12.05</u></p>	<p>22.12.2005</p>	<p>Mr. U.K. Nair, learned counsel for the applicant submits that he has received written statement only today and that the applicant wants to file rejoinder. Counsel for the applicant further submits that this can be posted for hearing. Post on 9.2.2006 for hearing. Rejoinder, if any, in the meantime.</p> <p><u>Vaigad</u> Vice-Chairman</p>

14.02.2006

Rejoinder is not filed. Post
before the next Division Bench.

26.12.05

WTS filed by
the Respondents.

Vice-Chairman

mb

3.8.05

On the prayer of Mr U.K.Nair, learned
counsel for the applicant post the case
before the next Division Bench for hearing

1-8-06

No. Rejoinder has
been filed.

Member

Vice-Chairman

pg

27.2.07

WTS filed.

O.A 247/05

7
The is a letter dated
5.9.07 received from
the office of the Post
Master General, Assam
Circle, Gauhati. in
connection with in compliance
to the order dated 1.3.07
in O.A 247/05 filed by
Sri Dinal Chakraborty.

Laid before the
Honble. Member for further
orders.

SO (5)

Dis.
01/9/07

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.
ORDERS SHEET

1. Original Application No. _____
2. Misc Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____

Applicant(S)

-VS- Union of India & Ors

Advocate for the Applicants:-

Advocate for the Respondents:-

Notes of the Registry	Date	Order of the Tribunal
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5

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.247 of 2005

DATE OF DECISION: 01.03.2007

1. Shri Dulal Chakraborty

.....APPLICANT(S)

Mr U.K. Nair, Mr B. Sarma
Mr Arun C and Mrs B. Chakraborty

ADVOCATE(S) FOR THE
APPLICANT(S)

- versus -

Union of India & Ors.

.....RESPONDENT(S)

Ms U. Das, Addl. C.G.S.C.

ADVOCATE(S) FOR THE
RESPONDENT(S)

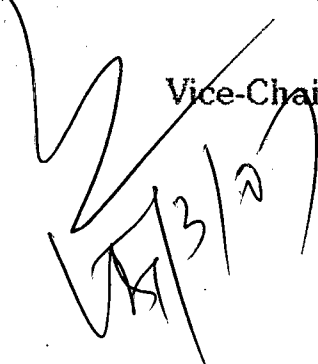
CORAM:

THE HON'BLE SHRI K.V. SACHIDANANDAN, VICE CHAIRMAN
THE HON'BLE SMT CHITRA CHOPRA, ADMINISTRATIVE MEMBER

- | | | |
|----|--|--------|
| 1. | Whether reporters of local newspapers may be allowed to see the Judgment ? | Yes/No |
| 2. | Whether to be referred to the Reporter or not? | Yes/No |
| 3. | Whether to be forwarded for including in the Digest Being compiled at Jodhpur Bench and other Benches? | Yes/No |
| 4. | Whether their Lordships wish to see the fair copy of the Judgment ? | Yes/No |

Vice-Chairman

.....


17/3/07

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.247 of 2005

Date of Order: This the 1st day of March 2007

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman

The Hon'ble Smt Chitra Chopra, Administrative Member

Shri Dulal Chakraborty,
S/o Late Keshab Chakraborty,
Resident of Nizarapar, Chandmari,
Guwahati.

.....Applicant

By Advocates Mr U.K. Nair, Mr B. Sarma
Mr Arun C and Mrs B. Chakraborty

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Department of Communication,
New Delhi.
2. The Chief Post Master General,
Assam,
Meghdoot Bhawan, Guwahati.
3. The Director, Postal Services (HQ),
Assam Circle.
4. The Senior Superintendent of Post Offices,
Guwahati Division, Guwahati.
5. The Senior Post Master,
Guwahati,
General Post Office.

.....Respondents

By Advocate Ms U. Das, Addl. C.G.S.C.

.....



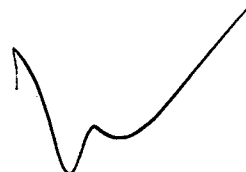
ORDER (ORAL)

K.V. SACHIDANANDAN (VICE-CHAIRMAN)

The applicant who was working as Postal Assistant in the NSC/KVP discharge counter of Guwahati General Post Office, was proceeded with a chargesheet under Rule 14 of CCS (CCA) Rules, 1965. An enquiry was held and after enquiry, a penalty of reduction of pay by 5 (five) stages from Rs.4,800/- to Rs.4,300/- in the time scale of pay of Rs.4000-100-6000/- for a period of 3 (three) years with effect from 01.02.2004 was imposed on the applicant vide order dated 20.01.2004. Aggrieved by the said order the applicant preferred an appeal before the Appellate Authority which was rejected on the ground of delay. Aggrieved by the action of the respondents the applicant has filed the present O.A. seeking the following reliefs:

- "8.1 To set aside and quash the Memorandum dated 03.04.02 (Annexure-2) along with the order dated 20.01.04 (Annexure-8) and 20.12.04 (Annexure-12)
- 8.2 To set aside and quash the order dated 21/05/04 Annexure-10.
- 8.3 To direct respondent authorities to treat the period of suspension of the applicant from 27.10.01 to 16.07.03 as on duty with all consequential benefits including salary etc."

2. The respondents have filed a detailed written statement contending that the O.A. will not stand and is to be dismissed. However, when the matter came up for hearing we find that one of the prayers of the applicant is that the order of penalty was on technical ground of delay of a few days in filing the appeal. The applicant prayed that the Appellate Authority may be directed to




consider the grounds in the appeal on merit rather than rejecting it on the ground of being time barred.

3. Heard Mr U.K. Nair, learned counsel for the applicant and Ms U. Das, learned Addl. C.G.S.C. The learned counsel for the applicant submitted that he will be satisfied if a direction is given to the Appellate Authority to consider the appeal of the applicant by condoning the delay in filing the appeal and pass appropriate orders within a time frame.

4. The learned counsel for the respondents submitted that the Appellate Authority has followed the statutory rules and passed the order of penalty accordingly.


5. We have given due consideration to the arguments, pleadings and materials placed on record. The appellate order is on the ground of not condoning the delay. Relying on the decision of the Hon'ble Supreme Court reported in IT 2000 (5) SC 389, State of Bihar and Anr. Vs. K. Prasad Singh and others that while considering the delay the authority should have a liberal approach in condoning the same, which has not been done in this case. Therefore, we are of the view that in the interest of justice it will be fit to remand the issue back to the Appellate Authority for fresh consideration of the applicant's appeal by condoning the delay. The applicant submitted that the representation dated 04.06.2004 may also be considered by the Appellate Authority.

6. In the facts and circumstances of the case we set aside the order of the Appellate Authority dated 20.12.2004 and remand the matter back to the Appellate Authority for fresh consideration



condoning the delay in filing the appeal and direct the Appellate Authority to consider afresh the issue involved in this case and dispose of the appeal on merit by a speaking order. The applicant is also given liberty to file a comprehensive and detailed representation, if required, before the Appellate Authority within two weeks from the date of receipt of the order. The Appellate Authority is directed to reconsider the appeal afresh alongwith the representation, if filed by the applicant, and pass appropriate orders within a time frame of two months thereafter.

The O.A. is disposed of as above. In the circumstances no order as to costs.


(CHITRA CHOPRA)
ADMINISTRATIVE MEMBER


(K. V. SACHIDANANDAN)
VICE-CHAIRMAN

Original
Central Adm. Serv. Bd.
15 SEP 2005
गुवाहाटी न्यायपीठ
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

O.A No. 247 of 2005.

Sri Dulal Chakraborty.

..Applicant/-

-VERSUS-

The Union of India & Ors.

.. Respondents/-

SYNOPSIS

The applicant has by way of this application assailed the order dated 20.01.04 by which penalty of reduction of his pay by 5 stages in time scale of Rs. 4000-6000/- and also the order dated 20.12.04 by which his appeal was rejected by the appellate authority as being time barred.

The appellate authority inspite of specific provision of Rule 31 of the CCS (CCA) Rules 1965, permitting consideration of delay, in a most arbitrary manner proceeded to reject the appeal of the applicant without considering the marginal delay occasioning in preferring the appeal.

The applicant who was issued with a Charge sheet under Rule - 14 of the said Rules however was not imposed with any major penalties but, was imposed with minor penalty as provided for under Sub-Rule - III - (A) of Rule- 11 of the said Rules. Accordingly, the period of suspension of the applicant from 29.10.01 to 16.07.03 was required to be regularised as on duty with

11

all consequential benefits. However, the respondent authorities vide order dated 21.05.04 proceeded to reject the prayer of the applicant and his said period of suspension came to be treated as non-duty for all intent and purpose. The representation preferred by the applicant against order dated 21.05.04 is still pending disposal.

The applicant has by way of this application assailed the Memorandum dated 03.02.02 (Annexure-2), order dated 20.01.04 (Annexure -8), order dated 21.05.04 (Annexure - 10) and the order dated 20.12.04 (Annexure - 12).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI

O.A. No. of 2005.

BETWEEN

Sri Dulal Chakraborty
S/o Late Keshab Chakraborty
Resident of Nizarapar, Chandmari,
Guwahati.

...Applicant.

-AND-

1. The Union of India represented by the
Secretary to the Government of India,
Department of Communication, New Delhi.
2. The Chief Post Master General, Assam,
Meghdoot Bhawan, Guwahati.
3. The Director Postal Services (H.Q.),
Assam Circle.
4. The Senior Superintendent of Post
Offices, Guwahati Division, Guwahati.
5. The Senior Post Master, Guwahati,
General Post Office.

...Respondents/-

Filed by:- the Applicant
through Bijesh Sharma.
Advocate.

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

This application is directed against the order dated 20.01.04 issued by the Senior Superintendent of Post Offices, Guwahati Division imposing upon the applicant the penalty of reduction of his pay by 5 stages for a period of 3 years with effect from 01.02.04. This application is also directed against the order dated 24/21. 5/2004 issued by the respondent no.- 3 holding the period of suspension of the applicant from 29.10.01 to 16.07.03 as non-duty for all purpose. The applicant also assails the order dated 20.12.04 passed by the appellate authority refusing to entertain the appeal preferred by the applicant.

2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the application is within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION:

The applicant further declares that the application is filed within the limitation period prescribed under Section - 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE:

4.1 That the applicant is a citizen of India and a permanent resident in the State of Assam and as such he is entitled to all the rights, privileges and protection guaranteed under the Constitution of India and the laws framed there under.

4.2 That the applicant states that while working as Postal Assistant in the Guwahati Post Office, on 29.10.01 an unfortunate incident happened when an iron chest containing a sum of Rs 2,51,000/- was stolen away by some miscreants. The said amount was collected by the applicant from the Head Treasurer Guwahati General Post Office for making payment towards encashment of NSC and KVP from his counter. After withdrawing the said amount the applicant had kept it in the Iron chest available at his counter. While the applicant had gone to collect the records/ registers required for recording the transactions being effected during the course of the day, some miscreants lifted away the chest. The area wherein the counter is located is a protected area and it was the duty of the security personnel to protect Government property including the cash and other records.

4.3 That your applicant states that as regards the theft of the said chest box containing the amounts of Rs. 2,51,000, a FIR was lodged and basing on the same, Panbazar P.S case No. 327/01 came to be registered, naming the applicant as one of the accused. The applicant was placed under arrest in connection

with the case and accordingly vide order dated 31.10.01 issued by the respondent no. 4 the applicant was placed under suspension w.e.f 29.10.01.

A copy of the order dated 31.10.01 is annexed as ~~Annexure~~ - 1.

4.4 That your applicant states that basing on the incident happening on 29.10.01, a Memorandum of Charge dated 03.04.02 was issued against the applicant framing against him two charges and directing him to submit his show cause reply as regards the same. The charges framed against the applicant are the following

Article:- 1 "Sri Dulal Chakraborty while working as PA, NSC/ KVP discharge counter of Guwahati GPO on 29.10.01 took a sum of Rs. 2,51,000 only as advance from Head Treasurer, Guwahati GPO and stated to have been kept inside the Iron chest of his counter and went to the record room leaving the iron chest unattended which was lifted away by some miscreants resulting loss to the Government to the tune of Rs. 2,51,000.00."

Article:- 2 "Sri Dulal Chakraborty while working as PA, NSC/ KVP discharge counter of Guwahati GPO while working as such on 29.10.01 he attended office at 10.00 hrs. and took a sum of Rs. 2,51,000 from the Head Treasurer, Guwahati GPO as advance for making payment in encashment of NSCs and KVPs from his counter. The said amount of Rs. 2,51,000 stated to have been kept inside the Iron chest of his counter by him. After keeping the said amount of cash inside the iron chest,

he went to the record room during 10.05 to 10.15 hrs. keeping the iron chest unattended and also without asking any other staff available there for keeping watch over the chest. During the above period the said iron chest containing Rs. 2,51,000 has been lifted away by some miscreants as a result the govt. has to sustain loss of the said amount. Before leaving the iron chest, had he asked any other staff available there to keep watch over the iron chest, the miscreants could have not been able to take away the same."

It may be mentioned here that no charge of misappropriation of Government money was framed against the applicant.

A copy of the charge sheet is annexed as

Annexure - 2.

4.5 That the applicant accordingly submitted his show cause reply and on not being satisfied against the same, the respondent no.3 (disciplinary authority) vide order dated 04.06.02 proceeded to appoint Sri Ramjoy Biswas ASPD (H.Q) Guwahati Division as Enquiry Officer to enquire into the charge levelled against the applicant. The respondent no. 3 also appointed Sri Abdul Matin SDIPO (P) Bijoynagar Sub-division as the Presenting Officer in the matter.

Copies of the order appointing the Enquiry Officer and Presenting Officer are annexed as **Annexure- 3** series.

4.6 That your applicant states that the investigating authorities of the Panbazar P.S case no. 327/01 proceeded on 30.04.03 to submit a final report in the said case with the prayer for discharge of the accused persons including the applicant from the said case. The applicant was accordingly discharged from the said case.

4.7 That your applicant states that consequent upon of submission of final report in Panbazar P.S case no. 327/01 and its acceptance by the competent authority, the applicant brought this to the notice of the respondent authorities and prayed for the revocation of his order of suspension. Accordingly, vide order dated 15.07.03 the respondent no. 3 proceeded to revoke the order of suspension of the applicant with further direction as regards his posting on reinstatement. The applicant on his reinstatement in service was vide order dated 16.07.03 posted as Postal Assistant, Postal Store Depot, Guwahati.

Copies of the order dated 15.07.03 and 16.07.03 are annexed as **Annexure - 4 & 5** respectively.

4.8 That your applicant states that on conclusion of the enquiry, the Enquiry officer proceeded to submit his Enquiry report which was furnished to the applicant by the respondent no. 3 vide communication dated 04.12.03.

Copies of the communication dated 04.12.03 alongwith its enclosures is annexed as **Annexure - 6.**

4.9 That your applicant states that mere perusal of the Enquiry Report would reveal that no material whatsoever has been brought on record towards substantiating the charges levelled against the applicant and the Enquiry Officer basing on surmises and conjectures proceeded to hold the charges levelled against the applicant as proved. On receipt of the said Enquiry Report the applicant vide his communication dated 20.12.03 proceeded to submit his representation against the same inter-alia highlighting therein the illegalities/ infirmity as regards the conclusions reached by the Enquiry Officer. The applicant prayed before the Disciplinary authority to take into consideration the written brief submitted by him before the Enquiry Officer while proceeding to take into consideration the enquiry report as submitted by the Enquiry Officer.

A copy of the representation dated 20.12.03 alongwith its enclosures are annexed as **Annexure - 7.**

4.10 That your applicant states that the Disciplinary authority without taking into consideration the points urged by the applicant proceeded vide order dated 20.01.04 to accept the enquiry report as submitted by the Enquiry authority and imposed upon the applicant the penalty of reduction of pay by 5 stages from Rs. 4800 to 4300 in the time scale of pay of Rs 4000-100-

6000 for a period of 3 years w.e.f. 01.02.04 with further direction that during the currency of the said penalty the applicant would not earn any increment.

A copy of the order dated 20.01.04 is annexed as Annexure - 8.

4.11 That your applicant states that being aggrieved by the penalty imposed upon him vide order dated 20.01.04 the applicant proceeded to prefer an appeal against the same on 11.03.04 before the Director Postal Services (H.Q) Assam circle. As there was marginal delay for submission of the appeal against the order dated 20.01.04, the applicant prayed before the appellate authority for condonation of delay and for consideration of his appeal on merits.

A copy of the appeal is annexed as Annexure - 9.

4.12 That your applicant states that pending consideration of his appeal, the applicant vide his representation dated 17.04.04 prayed before the respondent no. 3 for regularisation of his suspension period from 29.10.01 to 16.07.03 as on duty with all consequential benefits. The respondent no. 3 in a most arbitrary and illegal manner proceeded to dispose of the prayers made by the applicant by directing that the period of suspension from 29.10.01 to 16.07.03 as non-duty for all purpose under the provisions of FR-54. The said aspect of the matter was communicated to the applicant by the respondent vide communication dated 24/21.05.04.

A copy of the communication dated 24/21.05.04 is annexed as **Annexure - 10.**

4.13 That your applicant states that being aggrieved by the rejection of his prayer for regularisation of the period under suspension as on duty, the applicant vide his representation dated 04.06.04 prayed for re-consideration of the matter and passing of appropriate order under FR-54 (B) towards regularising his period of suspension as on duty.

A copy of the representation dated 04.06.04 is annexed as **Annexure - 11.**

4.14 That your applicant states that the appeal as preferred by the applicant on 11.03.04 was considered by the appellate authority however in view of the marginal delay occasioning in preferring the said appeal, the appellant authority proceeded to reject the said appeal. Accordingly, it could not be considered on merit and inspite of a prayer made by the applicant of delay in preferring the appeal, the appellate authority refused to entertain the appeal on its merit causing great prejudice to the applicant and was issued with charge sheet vide letter dated 20.12.04.

A copy of the letter dated 20.12.04 is annexed as **Annexure - 12.**

4.15 That the applicant states that the charges as levelled against him vide Annexure - 2 memorandum dated 03.04.02 is a perverse one inasmuch as for

lifting away of the Iron chest, no fault could be attributed to the applicant inasmuch as it was the duty of the respondents to provide adequate security coverage to prevent such incident. It was not for the first time that the applicant had left his cabin and proceeded to the record room on 29.10.02, but it is a daily affair and it was the practice followed by the persons working in the discharge counter to periodically visit the record room to trace out the of the NSC/ KVP presented for refund by the consumers. In this view of the matter it was not necessary to intimate the colleagues working in the same area to look after the counter on each and every visit by the incumbent posted in the NSC/ KVP discharge counter to the record room. The protection of cash and other materials kept in the record room is the joint responsibility of all concerned including the in charge of the said section. However, the applicant was made a scape goat and the authorities with a view to protect their own skins proceeded to issue the memo of charge dated 03.04.02 culminating in the issuance of the order dated 20.01.04, imposing upon the applicant the penalty of reduction of his pay by 5 stages from 4800/- to 4300/- for a period of 3 years from 01.02.04.

4.16 That your applicant states that the memorandum of charges was framed against the applicant under Rule - 14 of the C.C.S (CCA) Rules, 1965, however no major penalty was imposed upon the applicant, but only a minor penalty as contemplated under clause III - A of Rule - 11 was imposed upon the applicant. As such the

period of suspension undergone by the applicant ought to have been treated as on duty and the provisions of FR - 54 will have no application in the case on hand.

4.17 That your applicant states that the order dated 21.03.04 rejecting the prayer of the applicant for treating the period of his suspension as on duty in the facts and circumstances of the case is arbitrary, illegal and in clear violation of the provision of the rules and regulations holding the field.

4.18 That the appellate authority under Rule 31 of the said Rules being conferred with the power to condone the delay, if any in preferring of an appeal and there being only a marginal delay in preferring the appeal dated 11.03.04 by the applicant, ought to have considered the same on merits. The rejection of appeal preferred by the applicant as being time barred was uncalled for in the facts and circumstances of the case.

4.19 That your applicant states that the no penalty could have been imposed upon in terms of the charge framed against him vide the Memo dated 03.04.02 and further no major penalty could have been imposed upon applicant, the period of his suspension with effect from 29.02.01 to 16.02.02 could not have been treated as Non-duty. As such the order dated 21.01.04 and 21.05.04 are liable to be set-aside and quashed.

5. **GROUND FOR RELIEF WITH LEGAL PROVISIONS:**

5.1 For that in any view of the matter the impugned order dated 20.01.04, 21.05.04 and 20.12.04 are not sustainable in the eye of law and liable to set-aside and quashed.

5.2 For that the charge framed against the applicant vide the memo dated 03.04.02 is a perverse one and no proceeding could have been initiated against the applicant. Failure of the part of the Respondent authorities to take into consideration the same has the effect of vitiating the proceedings.

5.3 For that the proceeding having being initiated under Rule - 14 of the Rules of 1965 and a minor penalty having being imposed upon the applicant the period of his suspension ought to have been treated as on duty for all intent and purpose.

5.4 For that Rule 31 of the Rules of 1965 having conferred upon the appellate authority the power of condonation, it was not open for him to reject the appeal of the applicant as being time barred.

5.5 For that in the facts and circumstances of the case the penalties imposed upon the applicant are not sustainable and liable to be set-aside.

5.6 For that in any view of the matter the impugned orders are not sustainable in the eye of law and liable to it to be set-aside and quashed.

5.7 For that the criminal case as initiated against the

applicant having ended in submission of final report, the respondent authorities ought to have taken into consideration the same and exonerated the applicant from the charges levelled against him in the departmental proceeding.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicant declares that he has no other alternative and efficacious remedy except by way of filing this application. He is seeking urgent and immediate relief.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

The applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR:

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for and notice be issued to the respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs:

8.1 To set aside and quash the Memorandum dated

03.04.02 (Annexure - 2) along with the order dated 20.01.04 (Annexure - 8) and 20.12.04 (Annexure - 12).

8.2 To set-aside and quash the order dated 21.05.04 Annexure - 10.

8.3 To direct respondent authorities to treat the period of suspension of the applicant from 29.10.01 to 16.07.03 as on duty with all consequential benefits including salary etc.

8.4. Cost of the application.

8.5 Any other relief/ reliefs that the applicant in the facts and circumstances of the case would be entitled to.

9. INTERIM ORDER PRAYED FOR:

In this facts and circumstances of applicant does not pray for an interim direction at this stage but however prays for early hearing in the matter.

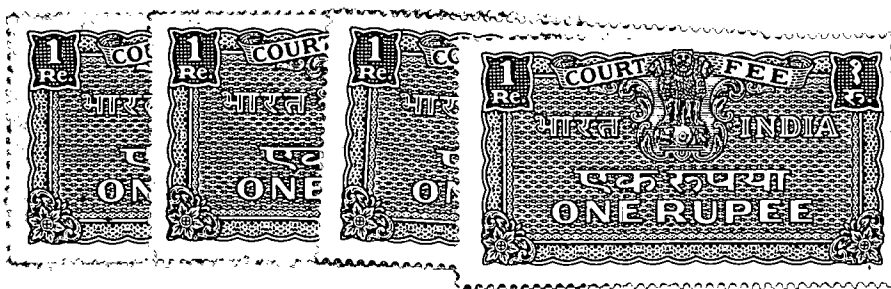
10.

11. PARTICULARS OF THE I.P.O.:

- i) I.P.O. No. : 206 155 659
- ii) Date : 26.7.2005
- iii) Payable at: Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.



VERIFICATION

I, Shri Dulal Chakraborty, aged about 51 years, son of Late Keshab Chakraborty, resident of Nizarapara, Chandmari, Guwahati, Assam, do here by solemnly affirm and verify that the statements as made in paragraphs 2, 3, 4.2 and 4.16 to 4.19 and _____ of the accompanying application are true to the best of my knowledge; those made in paragraphs 1, 4.1, 4.3, 4.4 to 4.15 _____ being matters of record are true to my information which I verily believe to be true and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign this verification on this the 9th day of September, 2005 at Guwahati.

Dulal Chakraborty

DEPONENT

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE SR. POST MASTER. GUWAHATI GPO
GUWAHATI - 1

No.: F-6/ 2000-01

Dated Guwahati:- 31.10.2001

ORDER

WHEREAS a disciplinary proceeding against Sri Dulal Chakraborty PA NSC Guwahati. GPO (HO) is contemplated.

Now, therefore the undersigned, in exercise of powers conferred by sub Rule (I) of Rule 10 of the Central Civil Service (Classification, control and appeal) Rule 1965, hereby places the said Sri Dulal Chakraborty under suspension with immediate effect. W.e.f. 29.10.01.

It is further ordered that during the period that this order shall remain in force the Headquarters of Sri Dulal Chakraborty PA (NSC) GH. GPO (HO) should be Guwahati and the said Sri Dulal Chakraborty shall not leave the Headquarters without obtaining prior permission of the undersigned.

Sr. Postmaster
Guwahati GPO
Guwahati - 1.

Copy forwarded to:-

1. Sri Dulal Chakraborty PA (NSC) Guwahati GPO (HO). The order regarding subsistence allowance admissible will be issue separately.
2. The Asst. postmaster, Accountant/ Ghy. GPO for information and necessary action.
3. The SSPOS/ GH DN for information and confirmation of the above order.

Certified to be true Copy

 Advocate

24/11

GOVT. OF INDIA
MINISTRY OF COMMUNICATION

No F5-3/201-2002

the 24-2002

MEMORANDUM

The undersigned proposed to hold an Inquiry against Shri Dulal Chakrabarty, then PA NSC/Dish Counter, SPO of the Central Civil Services (Classification, Control and Appeal) Rules 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of imputations of misconduct or misbehaviour in support a list of documents in which and a list of witness by whom the articles charge are proposed to be sustained are also enclosed (Annexure III).

2. Shri Dulal Chakrabarty is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specially admit or deny each article of charge.

4. Shri Dulal Chakrabarty is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions or Rule 14 of the CCS(CCA) Rules 1965 or the order/directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against him ex parte.

5. Attention of Shri Dulal Chakrabarty is invited to Rule 20 of the Central Civil Services (Conduct) Rules 1964 under which no Govt. servant shall bring or attempt to bring any political or pused influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Govt. if any representation is received on his behalf from another person presumed that Shri Dulal Chakrabarty is aware of such a prepresentation and that it has been made at his instance and action will be taken against him for violation of the CCS (Conduct) Rules, 1964.

The receipt of the Memorandum may be acknowledged.

Sr. Supdt. of Post Offices
Guwahati Division, Guwahati.

To
Rd/AD X Shri Dulal Chakrabarty
then PA NSC/Dish Counter
Guwahati S.P.O. (U/S)

2 Personal file

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Advocate

ANNEXURE - I

Statement of articles of charge framed against Shri Dulal Chakrabarty the then PA, NSC/KVP discharge counter, Guwahati GPO under Rule 14 of CCS(CCA) Rules 1965.

Article - I

Shri Dulal Chakrabarty while working as PA, NSC/KVP discharge counter of Guwahati GPO on 29.10.2001 took a sum of Rs. 2,51,000. (Rupees two lakh fifty-one thousand) only as advance from Head Treasurer, Guwahati GPO and stated to have been kept inside the iron chest of his counter and went to the record room leaving the iron chest unattended which was lifted away by some miscreants resulting loss to the Govt. to the tune of Rs. 2,51,000.00.

By his above act, the said Shri Dulal Chakrabarty is considered to have failed to maintained absolute integrity and devotion to duty as required under Rule 3(1)(i) and 3(1)(ii) of the CCS(Conduct) Rules, 1964 which are tantamount to unbecoming of a Govt. servant, thereby he had violated the provision of Rule 3(1)(iii) of the CCS(Conduct) Rules, 1964.

ANNEXURE - II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Shri Dulal Chakrabarty the then PA, NSC/KVP discharge counter, Guwahati GPO under Rule 14 of CCS(CCA) Rules, 1965.

Article - I.

Shri Dulal Chakrabarty, the then PA NSC/KVP discharge counter Guwahati GPO while working as such on 29.10.2001 he attended office at 10:00 hrs. and took a sum of Rs. 2,51,000.00 from the Head Treasurer, Guwahati GPO as advance for making payment in encashment of NSCs and KVPs from his counter. The said amount of Rs. 2,51,000.00 stated to have been kept inside the Iron chest of his counter by him. After keeping the said amount of cash inside the iron chest, he went to the record room during 10:05 to 10:15 hrs. keeping the iron chest unattended and also without asking any other staff available there for keeping watch over the chest. During the above period the said iron chest containing Rs. 2,51,000.00 has been lifted away by some miscreants as a result the Govt. has to sustain loss of the said amount. Before leaving the Iron chest, had he asked any other staff available there to keep watch over the iron chest, the miscreants could have not been able to take away the same.

By doing the above act, the said Shri Dulal Chakrabarty is considered to have failed to maintain absolute integrity and devotion to duty as required under Rule 3(1)(i) and Rule 3(1)(ii) of CCS(Conduct) Rules 1964 which are tantamount to unbecoming of a Govt. servant, thereby he had violated the provision of Rule 3(1)(iii) of the CCS(Conduct) Rules, 1964.

ANNEXURE - III

List of documents by which the articles of charge framed against Shri Dulal Chakrabarty the then PA, NSC/KVP discharge counter, Guwahati GPO are proposed to be sustained.

1. Treasurer's Cash Book for the period from 24.3.01 to 9.2.02
2. Written statement dated 8.1.02 of Shri Dulal Chakrabarty, the then PA, NSC/KVP discharge counter, Guwahati GPO.
3. Questionair reply written statement dated 9.1.02 of Shri Dulal Chakrabarty the then PA, NSC/KVP discharge counter, Guwahati GPO.

ANNEXURE - IV

List of witnesses by whom the article of charge framed against Shri Dulal Chakrabarty the then PA NSC/KVP discharge counter, Guwahati GPO are proposed to be sustained.

01. Md. Musha Haque, the then Head Treasurer, Guwahati GPO.
02. Shri Swapan Das, the then APM (NSC), Guwahati GPO.

Senior Superintendent of Post Offices
Guwahati Division, Guwahati.

31

Department of Posts : India
Office of the Senior Superintendent of POs : Guwahati Division :
Meghdoot Bhawan 3rd floor : Guwahati : 781 001.

No ::: F5-3/2001-02 (L)

June 4, 2002

ORDER

WHEREAS an inquiry under Rule 14 of CCS(CCA) Rules 1965 is being held against Shri Dulal Chakrabarty, PA Guwahati GPO (now under suspension)

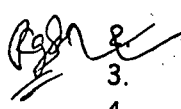
AND THEREFORE the undersigned considered that an Inquiry officer should be appointed to inquire into the charges framed against the said Shri Dulal Chakrabarty.

NOW THEREFORE the undersigned in exercise of powers conferred by sub Rule (2) of the said Rules hereby appoints Shri Ramjoy Biswas, ASPOs (HQ), Guwahati Division, Guwahati as the Inquiry officer to inquire into the charges framed against the said Shri Dulal Chakrabarty.


[S. Kamei]

Senior Superintendent of Post offices
Guwahati Division : Guwahati.

Copy to :-

1. Shri Ramjoy Biswas, ASPOs (HQ), Guwahati Division, Guwahati. A copy of the charge sheet under Rule 14 against the official is enclosed.
2.  Shri Dulal Chakrabarty, PA (U/s), Guwahati GPO, Guwahati.
3. Shri Abdul Matin, SDIPOs (P) Bijoy Nagar sub divn., Bijoy Nagar.
4. The Chief PMG (Vig), Assam Circle, Guwahati for information.


[S. Kamei]

Senior Superintendent of Post offices
Guwahati Division : Guwahati.

Certified to be true Copy


Advocate

Department of Posts : India
Office of the Senior Superintendent of POs : Guwahati Division :
Meghdoot Bhawan 3rd floor : Guwahati : 781 001.

No ::: F5-3/2001-02 (L)

June 4, 2002

ORDER

WHEREAS an inquiry under Rule 14 of CCS(CCA) Rules 1965 is being held against Shri Dulal Chakrabarty, PA, Guwahati GPO (now under suspension)

AND THEREFORE the undersigned considered that an Inquiry officer should be appointed to inquire into the charges framed against the said Shri Dulal Chakrabarty

NOW THEREFORE the undersigned in exercise of powers conferred by sub Rule 5(c) of the said Rules hereby appoints Shri Abdul Matin SDIPOs (P) Bijoy Nagar sub divn., Bijoy Nagar as the Presenting officer.

[S. Kamei]
Senior Superintendent of Post offices
Guwahati Division : Guwahati.

Copy to :-

1. Shri Abdul Matin SDIPOs (P) Bijoy Nagar sub divn., Bijoy Nagar. A copy of the charge sheet under Rule 14 against the official is enclosed.
2. Shri Dulal Chakrabarty, PA, Guwahati GPO, Guwahati.
3. Shri Ramjoy Biswas, ASPOs (HQ) Guwahati divn., Guwahati.
4. The Chief PMG (Vig), Assam Circle, Guwahati for information.

[S. Kamei]
Senior Superintendent of Post offices
Guwahati Division : Guwahati.

Department of Posts: India
Office of the Sr. Supdt. of POs: Guwahati Dn: Guwahati-781 001.

No. BX F5-3/2001-02 Dated at GH-1 the 15-7-2003

O R D E R

Whereas Shri Dulal Chakraborty, the then PA NSC Discharge Counter, Guwahati GPO was deemed to have been ~~xxxx~~ placed under suspension w.e.f. 29-10-2001 vide this office memo of even no. dated 22.3.2002.

Now, therefore the undersigned in exercise of powers conferred by clause (c) of Sub-Rule (5) of Rule-10 of the CCS (CCA) Rules, 1965 hereby revokes the said order of suspension with immediate effect.

SD/-
Sr. Supdt. of POs
Guwahati Divn: Guwahati-1.

Copy to:

1. Shri Dulal Chakraborty, PA, Guwahati GPO (Under suspension).
2. The Sr. PM, Guwahati.
3. The Chief PMG (Staff), CO/Ghy w.r.t. CO's case no. Staff/37-10/99 Pt-I.
4. The Staff 'B' Branch, Divisional Office /GH. Shri Dulal Chakraborty should be posted in a non-sensitive post where monetary transaction is not involved. Also he should be posted out from Guwahati GPO.
5. C/R file of the official.
6. P/F of the official.
7. O/C.

(S. Kamei)
Sr. Supdt. of POs
Guwahati Division: Guwahati-1.

Confirmed to be true copy
Advocate

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE SR. SUPERINTENDENT OF POST OFFICES, GUWAHATI DIVN.
MEGHDOOT BHAWAN 3RD FLOOR, GUWAHATI -781001

No: B-1827

Dated at Guwahati the 16.07.2003

The following transfer and posting order is issued to have immediate effect in the interest of service.

Sri. Dulal Chakraborty the then PA Guwahati GPO under suspension w. e. f. 29-10-2001 now revoked the said order vide this office memo No: F3/2001-2002 dated 15-07-2003 is transferred and posted as PA Postal Store Depot Guwahati in place Sri. Modhab Ch. Das who has been ordered as SPM Aringaon. *One for Mr*

ScP
Sr. Superintendent of Post Offices,
Guwahati Division, Guwahati-781001

Copy to :

1. The official concerned.
2. The PF of the official.
3. The Superintendent of PSD Guwahati.
4. The Sr. Postmaster Guwahati GPO.
5. The Chief Postmaster General, Assam Circle, Guwahati-781 001.
6. OC.
7. Spares.

[Signature]
Sr. Superintendent of Post Offices,
Guwahati Division, Guwahati-781001

Certified to be true Copy

[Signature]
Advocate

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE SR. POST MASTER. GUWAHATI GPO
GUWAHATI - 1

No. F5-3/ 2001-02 (L)

Dated: 04.12.03

To,

Sri Dulal Chakraborty, PA
Postal Stores Depot Guwahati - 21.

Sub:- Rule- 14 case against Sri Dulal Chakraborty. The
Asst. PA, (NSC for), Ghy GPO.

The inquiry into the above Rule - 14 case has since been completed. A copy of inquiry report dated 01.12.03 of Sri B.K. Singha, DPM - 1, Ghy GPO and I.O of the case is furnished upto with direction to submit your 'defence representation' if any within fifteen (15) days positively.

Encl:- Copy of the Inquiry report.

Sr. Surdt. Of post offices
Guwahati Div.
Guwahati - 1.

Inquiry report in the case against Sri Dulal Chakraborty then PA NSC/ KVP discharge counts, Guwahati, GPO under Rule 14 of CCS (CCA) Rules, 1965

1.1 Name of I.O & letter of authority:-

a) Sri B.K. Sinha, DPM - 1 Guwahati, GPO appointed to Act as IO vide SSPr, Guwahati Memo No. F5-3/ 2001-02 (L) dated 11.12.02.

b) Name of PO:- Sri Abdul Matin. OHQ, CI o/o SSPr, Guwahati vide SSPr/ Ghy memo No. F5-3/ 2001-02 (L) dated 04.06.02.

c) Name of charged official:- Sri Dulal Chakraborty the then PA, NSC/ KVP discharge counts, Guwahati, GPO.

d) Name of defence Asst:- Sri N.N. Dutta Rtd. SPM vide Birubari P.O., Gopinathnagar.

e) Disciplinary Authority:- The Sr. Supdt of Pos Guwahati Divn. Guwahati.

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B

Advocate

2.1 The Charged official participated in the enquiry from beginning to end. He was assisted by Sri. N.N. Dutta, Rtd. SPM, vill: Birubari, P.O. Gopinathnagar, who attended on all the regular hearing, 16.08.03, 22.09.03 and 23.09.03.

3.0 Article of charge and substance of imputation of misconduct or misbehaviour.

3.1 The following Article of charges have been framed against Sri Dulal Chakraborty.

Article - 1

Sri Dulal Chakraborty, the then PA, NSC/ KVP discharge counter, Ghy GPO while working as such on 29.10.01 he attended office at 10.00 hrs. and took a sum of Rs. 2,51,000.00 from the Head treasurer, Ghy. GPO as advance for making payment in encashment of NSCs and KVPs from his counter. The said amount of Rs. 2,51,000.00 stated to have been kept inside the Iron chest of his counter by him. After keeping the said amount of cash inside the Iron chest, he went to the record room during 10.05 to 10.15 hrs. keeping the chest unattended and also without asking any other staff available there for keeping watch over the chest. During the above period the said Iron chest containing Rs. 2,51,000.00 have been lifted away by some miscreants as a result the Govt. has to sustain loss of the said amount. Before leaving the Iron chest had he asked any other staff available there to keep watch over the Iron chest the miscreants could not have been able to take away the same.

By doing the above act, the said Sri Dulal Chakraborty is considered to have failed to maintain absolute integrity and devotion to duty as required under Rule 3 (1) (i) and Rule 3 (1) (ii) of CCS (conduct) Rules 1964 which are tantamount to unbecoming of a Govt servant, thereby had violated the provision of Rule 3 (1) (iii) of the CCS (conduct) Rules 1964.

4. List of exhibited documents:-

- Ext-1:- The treasurers cash book for the period from 24.03.01 to 09.02.02.
- Ext-2:- The written statement dated 08.01.02 of Dulal Chakraborty.
- Ext-3:- Questionair reply written statement dated 09.01.02 of Dulal Chakraborty
- Ext-D 1:- The hand to hand receipt book maintained in the KVP/ NSC discharged counter during the period.

5. List of witnesses examined :-

- SW 1:- Md. Musha Haque, the then Head Treasurer, Ghy.
- SW 2:- Sri Swapan Das, the then Apm (NSC) Ghy, GPO.
- DW 1:- Sri T.R Narzary, PA, Ghy, GPO.
- DW 2:- Smt Nirupama Goswami, NSC agent, Ghy.

In the preliminary hearing held on 26.07.03 the charged official Sri Dulal Chakraborty denied the charges levelled against him and pleaded himself as not guilty. Later he nominated Sri N.N. Dutta Rtd. SPM, vill: Birubari, P.O. Birubari Gopinathnagar to act as his defence assistance. The nomination was accepted and Sri Dutta participated in every regular hearing.

In a regular hearing held on 16.08.04 Sri Abdul Matin P.O of the case produced all the listed documents which were offered for inspection to the CO and his defence asst. The Charged Official admitted the documents shown as Ext- 1, Ext- 2 and Ext -3 are genuine and authentic. The CO was directed to submit a list of additional documents and defence witnesses proposed to be examined on his behalf if he desires. Accordingly the CO vide his letter dated 22.08.03 furnished a list of additional documents and additional witnesses as under:-

Additional documents:-

1. Copy of the FIR made by the Sr. Postmaster Ghy, GPO in the matter.
2. The preliminary investigation report in the matter along with the copy of the statement recorded.
3. The hand to hand receipt book maintained in the KVP/ NSC discharged counter for a period of atleast for 1 month prior to 29.10.01.

Additional witnesses:-

1. Mrs. Nirupama Goswami, NSC agent.
2. Sri T.R. Narzary, PA, Ghy, GPO.

The additional documents at serial nos. 1 & 2 above were rejected while the additional document at Sl. No. 3 was considered relevant and examined on 22.09.03 as Ext - D 1 by the CO.

Both the additional witnesses were considered relevant in the case and examined.

The next hearing was held on 22.09.03. The additional documents (Ext - D1) was examined by the CO and his DA. The CO was allowed to take notes of extracts of the documents as per his requirement.

All the state witnesses were present and examined them. Examination, cross examination and re-examination of Sri Musha Haque (SW - 1) revealed that Sri Dulal Chakraborty, PA, NSC/ KVP discharge counter took a sum of Rs. 2,51,000.00/- (Rupees two lakhs fifty thousand only) on 29.10.01 from Head Treasurer, Ghy, GPO as advance under receipt in the treasurer cash book.

The deposition, examination, cross examination and re-examination of Sri Swapn Das (SW - 2) revealed that Sri Dulal Chakraborty (CO) entered the counter room at 10.00 hrs. with cash in hand. He was not asked to look after the Iron cash box when Dulal Chakraborty entered the Record Room. The incident of lifting away of the Iron cash box was known by him only when Sri Narzary (PA) No. 3 attended the room at about 10.10 Hrs.

The next final hearing was held on 23.09.03. Both the defence witnesses were present. The deposition, examination and cross examination of Sri T.R. Narzary (DW -1) revealed that Sri Dulal Chakraborty was not in his seat and he was inside record room at about 10.10 hrs. Sri Saidur Rahman, PA no.1 and Sri Rajani Kalita a NSC agent were inside the room.

The deposition of Smt. Nirupama Goswami (DW - 2) examination and cross examination revealed that Sri Dulal Chakraborty (CO) entered the NSC counter room at 10.00 hrs. with cash in hand. He kept the said cash in his Iron cash box and locked. He then entered the record room. She did not hear asking the concerned APM/ Supervisor to attend the Iron chest by Sri Dulal Chakraborty before his departure to record room.

6. Case of the Defendant:-

I have gone through the defence statements Ext- 2 and Ext - 3 also written brief carefully and observed that the amount of Rs. 2,51,000.00/- was received on 29.10.01 by Sri Dulal Chakraborty from the Treasury. The said amount was kept inside the Iron cash box in his counter later. He then entered the record room leaving the iron cash box unattended. There is no mention anywhere in aforesaid defence statements (Ext-2 & Ext -3) also in written brief then Sri Dulal Chakraborty asked any available Staff to keep watch over there on cash box before leaving for record room although on Sri Saidur Rahman PA apart from APM was very near to him at the time.

7. Analysis and Assessment :-

Article I in Annexure -I read with Annexure - II .

Sri Dulal Chakraborty, the then PA , NSC/ KVP discharged counter Ghy, GPO while working as such on 29.10.01 took a sum of Rs.. 2,51,000/- from Head Treasury as advance. After keeping the said amount of cash inside the iron chest in his counter, he went to the record room keeping the iron chest unattended and without asking any other staff available there for keeping watch over the chest. The said iron chest was lifted away by some miscreants during the period from 10.05 to 10.15 hrs. while he was in record room.

It is fact that Sri Dulal Chakraborty took an advance of Rs. 2,51,000/- from Treasury on 29.10.01 as per documents and depositions of witnesses came to

light in hearings. He kept the said amount in the iron chest and went to record room thereafter without asking any staff for keeping watch over the iron chest although staff were available. The iron chest was thus left unattended.

Findings:-

On the basis of documentary and oral evidence adduced in the case before me and in view of the reasons and facts given about, I hold that,

1. The Charge brought under Article - I in Annexure - I read with Annexure - II against Sri Dulal Chakraborty has been proved beyond any shadow of doubt.

(B.K. Sinha)
Inquiry Officer and
Deputy Postmaster
Guwahati, GPO.



To

The Senior Supdt. of Post Offices,
Guwahati Division, Guwahati- 781001.

Dated Bamunimaidan, the 20-12-03.

Sir,

With reference to your letter No. F5-3/2001-02(L) dt. 4-12-2003 wherein a copy of the Inquiry Report prepared by the I.O. under Rule 14 against me, was enclosed directing me to submit my defence representation if any in the matter.

With due respect and submission I beg to submit my defence representation as follows which may kindly be studied carefully with your own assessment of the facts and situation of the case and an impartial views in the matter.

The I.O. did not, in fact, carefully examine the facts and realities that there was an APM Incharge to supervise my conduct and duties in the office and this particular aspect was also tactfully avoided while framing charge and allegation against me obviously there was motive behind to give benefit to other incumbent.

It was the purposeful denial of fact by Shri Swapan Das S/W.2 during proceedings held that I entered the record room with his full knowledge and my information to him under the regular practice that I could not start my counter duty without drawing cash from C.P.O. and consulting records relating to payment of NSC/KVAs proceeds to the holders in the counter. The I.O. resorted to the same line and words that the iron chest containing the amount of Rs. 2,51,000/- was left unattended to by me or without asking any one of the staff present. In this

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Conto... 2

Advocate

- 2 -

respect I contend to the point that a cash box could not be entrusted to any one staff of non-sharing liabilities except my legal supervisor owning encumbrance in the branch of my performance.

The I.O. denied the relevancy of the following additional documents prayed for production in the inquiry and thereby the fairness and transparency in the conduct of proceedings as well as the reasonable opportunity to defend myself was denied by the I.O.

1) The copy of F.I.R. of the incident submitted by the Sr. Post master Guwahati G.P.O. to the competent authority for preliminary investigation.

2) The copy of preliminary investigation report.

On report, the police investigated the matter and finally I was discharged by the Hon'ble Court in the matter.

In this connection a copy of my written brief of defence submitted to the I.O. is enclosed herewith for favour of your perusal and observation.

Under the above facts and points, I earnestly request your good-self to kindly examine the matter of representation carefully with a realistic observation to exonerate me from the purview of the charge for which act of your up-rightness I shall remain ever obliged.

Enclosure - 1.

Yours faithfully,
Dulal Chakravorty
(Dulal Ch. Chakravorty)
PA/PSD Guwahati- 781021.

To

Shri B.K. Sinha,
Inquiry Officer & Deputy Postmaster,
Guwahati G.P.O.

Dated Bamunimaidan, the 2003.

Sub :- Submission of written brief in respect of
Rule 14 inquiry against me.

Sir,

With due respect and submission I beg to state
as follows on the subject noted above relating to the
inquiry held by you.

It is requested that the brief as well as my
written statements marked Ext. 2 and Ext. 3 may kindly be
perused carefully and impartially to arrive at your own
and upright findings in the matter.

The issence of the article of charge reads
that on 29-10-01 inter-alia the iron chest was left
"unattended to" while I entered the record room adding
few words to the article - stated to have been kept
inside the iron chest. This leaves room to think otherwise
throwing doubt from the mind of the Disciplinary Authority
Mdz SSP/Guwahati as to the bonafides of the amount of
advance kept inside the iron chest by me. On this score
there is no doubt, contradiction or any controversy as
is evident from the depositions of the S.W.2 Shri Swapan
Kr. Das A.Pm. that he witnessed the amount in my hand
and also the D.W.2 Smt. Nirupama Goswami. Agent who said
that the amount was kept inside my iron chest under lock
and key. It was clearly transpired in the entire gamut

*certified true
copy*

Advocate

contd... 2

- 2 -

of proceedings and the outcome derived through the inquiry held by you considering the depositions of both the state and defence witnesses that at the start of my counter works in the capacity of NSC/KVP discharge P.I. the drawal of cash in advance from the G.P.O. treasury and going to the record room for consulting NSC/KVP guard files etc. were the usual and regular system necessitated by my nature of duty in the counter which was best known to the exclusive attribution and assignment of supervisor not only for the ill fated date of 29-10-01 but also since my taking over as such in the branch. Further, reference lies with the Exts. - (1) Treasury Cash book and (2) hand to hand receipt book of cash exchanged marked Ext.1 and D-I. In general I dash to the record room as a part of my duty with the knowledge of the Supervisor who denied the same particularly for 29-10-01 to my ill-luck. The record room is situated at the back side and attached where the A.Pm. N.S.C. Shri S. Das is seated and one is to the room by the side of the A.Pm. with his glaring vision.

In the circumstances, with extenuating factors like the room is well guarded by staff, it was natural and quite logical that I had no special occasion or exigency in the matter of charge

Secondly I have no locus-standy to encroach upon the performance of the A.Pm cum Supervisor of the branch and it was in his knowledge as to what the M.D.W. in respect of the A.Pm. N.S.C. says.

contd... 3

- 3 -

In the fact and situation you would be kind and judicious enough to apply your mind carefully to judge the article of charge with your own observation so that I may be exonerated from the purview of the charge and allegation in the natural justice.

Yours faithfully,

(Dulal Chakravorty)
P/A PSD/Bamunimeidan, Guwahati-21.

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SR. SUPDT OF POST OFFICES
GUWAHATI DIVISION:: GUWAHATI-781 001

No.: F5-3/2001-2002(L)

Dated Ghy the 20th January, 2004

In this office memo no. F5-3/2001-2002 dated 3/4/2002 it was proposed to take action against Shri Dulal Chakrabarty the then PA, NSC/KVP discharge counter, Guwahati GPO (now PA, PSD/Guwahati-21) under Rule-14 of the CCS(CCA) Rules, 1965.

Shri Dulal Chakrabarty was asked to submit his defence statement if any, on the charges leveled against him vide this office memo no. F5-3/2001-2002 dated 3/4/2002. Shri Chakrabarty submitted his defence statement dated 11/4/2002 which reads as below -

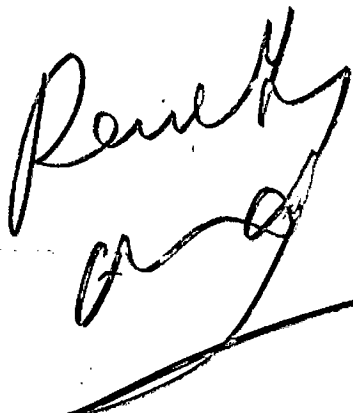
" With reference to your office memo no. F5-3/2001-02 dated 3/4/2002 I beg to state that I have totally denied the charges and also request to allow me to hear the case in person"

Shri Ramjoy Biswas, the then ASPOS(HQ), Guwahati Division, Guwahati was appointed as the Inquiry Officer of the Rule-14 case vide this office letter of even no dated 4/6/2002 to inquire into the charges framed against the said Shri Dulal Chakrabarty. Later Shri Ramjoy Biswas being placed under Suspension w.e.f. 26/11/2002 the I.O was changed. Shri B.K.Sinha, DPM-I Guwahati GPO was then appointed as I.O of the Rule-14 case vice Shri Ramjoy Biswas vide this office letter of even no dated 11/12/2002. Shri Sinha submitted his inquiry report dated 1/12/2003 which is reproduced below -

" Inquiry report in the case against Shri Dulal Chakrabarty, then PA, NSC/KVP discharge counter, Guwahati GPO under Rule-14 of CCS(CCA) Rules, 1965.

1.1 Name of the I.O & letter of authority:-

- a) Sri B.K.Sinha, DPM-I, Guwahati GPO appointed to act as I.O vide SSPOs, Guwahati memo no. F5-3/2001-2002(L) dated 11/12/02
- b) Name of the PO :- Shri Abdul Matin, offg. C.I, O/O SSPOs, Guwahati vide SSPOs, Guwahati memo no. F5-3/2001-2002(L) dated 4/6/02.
- c) Name of Charged official :- Shri Dulal Chakrabarty the then PA, NSC/KVP Discharge counter, Guwahati GPO.
- d) Name of the Defence Asstt- Shri N.N.Dutta, Retd. SPM, Vill- Birubari, PO- Gopinath nagar.
- e) Disciplinary Authority- The Sr. Supdt of Post Offices, Guwahati Division, Guwahati-781 001



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Advocate

- 2.1 The charged official participated in the enquiry from beginning to end. He was assisted by Shri N.N.Dutta, Retd.SPM, Vill- Birubari PO-Gopinath Nagar, who attended on all the regular hearings 16/8/03, 22/9/03 & 23/9/03.
- 3.0 Article of charge and substance of imputation of misconduct or misbehaviour.
- 3.1 The following article of charges have been framed against Shri Dulal Chakrabarty.

Article no-1

Shri Dulal Chakrabarty, the then PA, NSC/KVP Discharge Counter, Guwahati GPO while working as such on 29/10/2001 he attended office at 10:00 hrs and took a sum of Rs.2,51,000/- from the Head Treasurer, Guwahati GPO as advance for making payment in encashment of NSCs & KVPs from his counter. The said amount of Rs. 2,51,000/- stated to have been kept inside the Iron Chest of his counter by him. After keeping the said amount of cash inside the iron chest, he went to the record room during 10:05 hrs to 10:15 hrs keeping the chest unattended and also without asking any other staff available there for keeping watch over the chest. During the above period the said iron chest containing Rs. 2,51,000/- has been lifted away by some miscreants as a result the Govt. has to sustain loss of the said amount. Before leaving the iron chest had he asked any other staff available there to keep watch over the iron chest the miscreants could have not been able to take away the same.

By doing the above act, the said Shri Dulal Chakrabarty is considered to have failed to maintain absolute integrity and devotion to duty as required under Rule 3(1)(i) and Rule 3(1)(ii) of CCS(Conduct)Rules 1964 which are tantamount to unbecoming of a Govt. servant, thereby he had violated the provision of Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.

4. List of exhibited documents :-

- Ext-1 - The Treasurers Cash Book for the period from 24/3/01 to 9/2/2002
- Ext-2 - The Written statement dated 8/1/02 of Dulal Chakrabarty,
- Ext-3 - Questioner reply written statement dated 9/1/02 of Dulal Chakrabarty.
- Ext.D-1 - The hand to hand Receipt Book maintained in the KVP/NSC discharged counter during the period.

5. List of Witnesses examined -

- SW-1 - Md. Musha Haque, the then Head Treassurer, Guwahati GPO.
- SW-2 - Sri Swapan Das, the then APM(NSC), Guwahati GPO
- DW-1 - Sri T.R.Narzary, PA, Guwahati GPO
- DW-2 - Smti Nirupama Goswami, NSC, Agent, Guwahati

In the preliminary hearing held on 26/7/03 the charged official Shri Dulal Chakrabarty denied the charges leveled against him and pleaded himself as not guilty. Later he nominated Shri N.N.Dutta, Retd. SPM Vill-Birubari PO- Gopinath Nagar to act as his Defence Asstt. The nomination was accepted and Shri Dutta participated in every regular hearing.

In a regular hearing held on 16/8/2003 Shri Abdul Matin PO of the case produced all the listed documents which were offered for inspection to the C.O and his Defence Asstt. The Charged official admitted the documents shown as Ext-1; Ext-2 & Ext-3 are genuine and authentic. The C.O was directed to submit a list of additional documents and defence witness proposed to be examined on his behalf if he desires. Accordingly the C.O. vide his letter dated 22/8/03 furnished a list of additional documents and additional witnesses as under :-

Addl. documents

1. Copy of the FIR made by the Sr.Postmaster, Guwahati GPO in the matter.
2. The preliminary investigation report in the matter along with the copy of the statement recorded.
3. The hand to hand receipt book maintained in the KVP/NSC discharged counter for a period of at least for one month prior to 29/10/01.

Addl. Witnesses :

1. Mrs. Nirupama Goswami, NSC Agent.
2. Sri T.R. Narzary, PA Guwahati GPO

The additional documents at sl. 1 & 2 above were rejected while the additional documents at sl.3 was considered relevant and examined on 22/9/03 as Ext D-1 by the C.O.

Both the additional witnesses were considered relevant in the case and examined.

The next hearing was held on 22/9/03. The additional documents (ExD-1) was examined by the C.O. and his DA. The C.O was allowed to take notes of extracts of the documents as per his requirements.

All the state witnesses were present and examined them. Examination, cross examination and re-examination of Shri Musha Haque (SW-1) revealed that Shri Dulal Chakrabarty, PA NSC/KVP discharge counter took a sum of Rs. 2,51,000/- (Rs Two lakhs fifty one thousand) only on 29/10/01 from Head Treasurer, Guwahati GPO as advance under receipt in the Treasury Cash Book.

The deposition, examination, cross examination and re-examination of Sri Swapan Das(SW-2) revealed that Shri Dulal Chakrabarty (C.O) entered the counter room at 10:00 hrs with Cash in hand . He was not asked to look after the iron cash box when Dulal Chakrabarty entered the Record Room , the incident of lifting away of the iron chest box was known by him only when Shri Narzary PA No-3 attended the room at about 10:10 hrs.

The next and final hearing was held on 23/9/03. Both the defence witnesses were present. The deposition, examination and cross examination of Shri T.R.Narzary (DW-1) revealed that Sri Dulal Chakrabarty was not in his seat

and he was inside record room at about 10:10 hrs. Shri Saidur Rahman, PA no-1 and Shri Rajani Kalita a NSC Agent were inside the room.

The deposition of Smti Nirupama Goswami(DW-2), examination and cross examination revealed that Shri Dulal Chakrabarty (C.O) entered the NSC counter room at 10:00 hrs with Cash in hand. He kept the said cash in his iron cash box and locked. He then entered the Record Room. She did not hear asking the concerned APM/Supervisor to attend the iron chest by Shri Dulal Chakrabarty before his departure to Record Room.

6. Case of the Defendant :

I have gone through the Defence statements Ext-2 and Ext-3 also written brief carefully and observed that the amount of Rs. 2,51,000/- was received on 29/10/01 by Shri Dulal Chakrabarty from the Treasury. The said amount was kept inside the iron cash box in his counter later. He then entered the Record Room leaving the iron cash box unattended. There is no mention any where in aforesaid Defence statements(Ext-2 and Ext-3) also in written brief that Shri Dulal Chakrabarty asked any available staff to keep watch over the iron cash box before leaving for record room although one Shri Saidur Rahman PA apart from APM was very near to him at the time.

7. Analysis and Assessment :

Article I in Annexure I read with Annexure -II

Shri Dulal Chakrabarty, the then PA NSC/KVP Discharge counter, Guwahati GPO while working as such on 29/10/01 took a sum of Rs. 2,51,000/- from Head Treasurer as advance. After keeping the said amount of cash inside the iron chest in his counter, he went to the record room keeping the iron chest unattended and without asking any other staff available there for keeping watch over the chest. The said iron chest was lifted away by some miscreants during the period from 1005 to 1015 hrs while he was in record room.

It is fact that Sri Dulal Chakrabarty took an advance of Rs. 2,51,000/- from Treasury on 29/10/01 as per documents and depositions of witnesses came to light in hearings. He kept the said amount in the iron chest and went to Record room thereafter without asking any staff for keeping watch over the iron chest although staff were available. The iron chest was thus left unattended.

Findings

On the basis of documentary and oral evidence adduced in the case before me and in view of the reasons and facts given above, I hold that- I) "The charge brought under Article-1 in Annexure-I read with Annexure-II against Shri Dulal Chakrabarty has been proved beyond any shadow of doubt."

A copy of the inquiry report of the I.O dated 1/12/2003 was furnished to Shri Dulal Chakrabarty vide this office letter of even no dated 4/12/03 with direction to submit his defence representation, if any , in this regard. Shri Chakrabarty submitted his defence representation dated 20/12/2003 which is furnished below.

"With reference to your letter no.F5-3/2001-02(L) dated 4/12/03 wherein a copy of the Inquiry Report prepared by the I.O under Rule-14 against me, was enclosed directing me to submit my defence representation if any in the matter.

With due respect and submission I beg to submit my defence representation as follows which may kindly be studied carefully with your own

assessment of the facts and situation of the case and an impartial views in the matter.

The I.O did not, in fact, carefully examine the facts and realities that there was an APM In-charge to supervise my conduct and duties in the office and this particular aspect was also tactfully avoided while framing charge and allegation against me obviously there was motive behind to give benefit to other incumbent.

It was the purposeful denied of fact by Shri Swapan Das, S/W-2 during proceedings held that I entered the record room with his full knowledge and my information to him under the regular practice that I could not start my counter duty without drawing cash from GPO and consulting records relating to payment of NSC/KVPs proceeds to the holders in the counter. The I.O resorted to the same line and words that the iron chest containing the amount of Rs. 2,51,000/- was left unattended to by me or without asking any one of the staff present. In this respect I contend to the point that a cash box could not be entrusted to any one staff of non-sharing liabilities except my legal supervisor owning encumbrance in the branch of my performance.

The I.O denied the relevancy of the following additional documents prayed for production in the inquiry and thereby the fairness and transparency in the gament of proceedings as well as the reasonable opportunity to defend myself was denied by the I.O.

- 1) The copy of F.I.R of the incident submitted by the Sr.PM,Guwahati GPO to the competent authority for preliminary investigation.
- 2) The copy of preliminary investigation report. On report, the police investigated the matter and finally I was discharged by the Hon'ble Court in the matter.

In this connection a copy of my written brief of defence submitted to the I.O is enclosed herewith for favour of your perusal and observation.

Under the above facts and points, I earnestly request your good self to kindly examine the matter of representation carefully with a realistic observation to exonerate me from the purview of the charge for which act of your up-rightness I shall remain ever obliged."

Observation

I have gone through the articles of charge, report of the Inquiring Authority of the case, representation of Shri Dulal Chakrabarty and relevant records very carefully and observed as under -

1. It was established that Shri Dulal Chakrabarty, the then PA, NSC/KVP Discharge counter, Guwahati GPO took Rs. 2,51,000/- from Head Treasurer, Guwahati GPO on 29/10/2001 as advance for making payment in encashment of NSCs/KVPs from his counter. But he failed to keep the said huge amount of cash securely at his custody. He also did not ask any other staff to keep watch

over the cash before leaving the counter. His contention to the point that a cash box could not be entrusted to any one staff of non-sharing liabilities except his legal supervisor owing encumbrance in the branch of his performance is not at all tenable.

2. The denial to produce (1) the copy of F.I.R of the incident submitted by Sr.Postmaster, Guwahati GPO and (2) the copy of preliminary enquiry report of the case by the Inquiry Officer did not amount to denial of giving reasonable opportunity to the said Shri Dulal Chakrabarty to defend the case.. These records had no relevancy to the article of charge framed against him.

3. The report of the Inquiring Authority is based on documentary as well as oral evidences adduced during the proceedings of the case. It is established without any doubt, that the negligence on the part of Shri Dulal Chakrabarty led to the monetary loss to the Department. I do agree with the finding of the Inquiring Authority without having any contrary view and pass the following order to meet the end of justice.

ORDER

I, Shri Som Kamei, IPS, Sr. Supdt of Post Offices, Guwahati Postal Division, Guwahati in exercise of powers conferred under Rule-11 of the CCS(CCA) Rules 1965 do hereby award Shri Dulal Chakrabarty, the then PA, NSC/KVP discharge Counter, Guwahati GPO and now PA, PSD Guwahati-781 021 with the punishment of reduction of his pay by five (5) stages from Rs. 4,800/- to Rs. 4,300/- in the time scale of pay of Rs. 4000-100-6000/- for a period of three (3) years w.e.from 1-02-2004 with further direction that Shri Chakrabarty will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will not have the effect of postponing his future increments of pay.

SD/-
SOM KAMEI,
SR.SUPDT OF POST OFFICES
GUWAHATI DIVISION
GUWAHATI-781 001

Regd A/D

Copy to :-

1. Shri Dulal Chakrabarty now PA PSD Guwahati-781 021
2. The Supdt PSD, Guwahati-781 1021 for necessary action.
3. The SR.PM, Guwahati GPO
4. The Chief Postmaster General(INV) Assam Circle, Guwahati w.r.t CO's case mark no.Inv/T-6/2001.
5. The Chief Postmaster General(Vig), Assam Circle, Guwahati
6. C.R.File of the official
7. PF of the official
8. Punishment Register
- 9-10. Office copy and Spare.


SR.SUPDT OF POST OFFICES
GUWAHATI DIVISION
GUWAHATI-781 001

To

The Director , Postal Services(H.O)

Assam Circle, Meghdoot Bhawan,

Guwahati - 781001

Dated , Bamunimaidan, the 1-3-2004.

11-3-2004

Respected Sir,

I with due submission and humbly beg to lay before your honour the following lines of appear to be met with your own assessment of the fact and circumstances in a realistic manner and a favorable order.

That Sir, the Disciplinary authority Viz the SSPOS, Guwahati , punished your appellant with reduction of pay by 5 (five) stages for a period of 3 years vide his order No. Fb - 3/ 2001 - 2002 (1) dt 20.1.2004 . (Copy enclosed in Annexure - 1).

Originally I was placed under suspension in contemplation of departmental processing's which was however initiated under Rule 14 at the C.C.S (C.C.A) Rule 1965 and were concluded with the charge established.

That Sir, Since the article of charge and the statement of imputation and other required details, have been embodied in the penal order of the Disc authority, these were not reproduced in the appeal to avoid repetition.

That Sir, on conclusion of the deple inquiry, I submitted my written brief to the I.O . Shri B.K Sinha D.P.M . Who in fact did not assess the facts and circumstances of the incident properly but acted in the spirit of the charge sheet while giving his findings. A copy of the I.O's report is enclosed for your ready reference and favour of examination while disposing of my appeal (Annexure II)

That Sir, a copy of my defurce is furnished herewith as (Annexure III) as a part of my appeal for favour of your persual and own findings.

That Sir, the I.O's report is arbitrary and not based on his independent thinking. The APM in charge of the branch Shri Swapan Das SW - 2 down right

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Advocate

denied the fact that on 29 - 10 - 2001 . I informed him about my coming over to the record room.

The Disc. Authority as well as the I.O could not point out in the charge the period of my performance as PA NSC / KV P discharge counter which aviates that there was no preliminary investigation into the matter and a report thereof fire pointing the share of duties and responsibilities Vis a Vis the Vicarious ones .

That Sir, the I.O conducted the inquiry quite in a moutive manner without applying his mind to find out the plinth.

That Sir, the drawal of the identical advance of Rs. 2,51,000/- from the GPO Treasury and consultation of guard files for effecting discharge of the money instruments to the customers in the counter , were a obligatory part of my duty prevailed as a regular system not casually on 29-10-2001 long knowledge of the Sr. PM, D PM 1 staff NSC / KVP branch and to the best and particular knowledge of the APM in-charge who was stated at my back and very near . The wording of the charge sheet tends to show that exclusively and particularly on the fateful day of my performance on 29.10.2001 , the miscreants took advantage of my 10 mts' absence fearless of the presence of the APM in the chair, who had as if no assigned liability. In such situation it can be argued , I may exercised, that the APM Shri S.Das had the convenience in the episode.

That Sir , my asking any staff other than the APM concerned for watch is ultra-virus since the APM was interlined with me and was present in the chair.

That Sir, it may not be out spoken to point out that both the I.O & the Disc authority (I deposed as a state witness) gave clean chit as learnt to the co-offender of the case from the whole net work.

That Sir, the punishment is very harsh and unkind causing heavy monetary loss to me per month. As I feel the penalty hand at the back of the other ie the APM .

That Sir, I had no evil intention or any contributory lapse nor did I deliberately violated the rules quoted in the charge.

That Sir, the Hon'ble court discharged me without framing any charge considering my innocence in the matter. (copy enclosed)

Under the facts stated and the documents attached, it is fervently requested that your honour would be kind and judicious enough in the matter of my appeal for granting a Let off from the per-view of the charge sheet considering my unblemished record of service and as I was innocent for which I shall remain ever obliged.

That Sir, the marginal delay in submission of my appeal may kindly be condoned favour of your admission as it occurred on my extenuating ground.

Enclose - 3 (three)

I remain

Yours faithfully

Dulal Chakravarty

Now P.A , P.S.D / G.H

781021

Copy to

The Sr. Supdt of Post Offices

Guwahati Division for information and doing the needful in the matter.

(Dulal Chakravarty)

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SR. SUPDT OF POST OFFICES
GUWAHATI POSTAL DIVISION::GUWAHATI-781 001

Memo No :: F5-3/2001- 2002

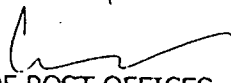
24
Dated Guwahati the 21st May, 2004

Shri Dulal Chakrabarty, Postal Asstt. NSC/KVP counter of Guwahati GPO was placed under suspension with effect from 29/10/2001 to 16/07/2003 vide Sr. Postmaster, Guwahati GPO memo no. F1-6/2000-2001 dated 31/10/2001 which subsequently modified vide this office memo of even no dated 22/3/2002. Shri Chakrabarty PA Guwahati GPO dated 29/10/2001, took a sum of Rs. 2,51,000/- (Rupees Two lakhs fifty one thousand) only as advance from the Head Treasurer, Guwahati GPO. The above amount has been kept inside the iron chest of his counter unattended, which was lifted by some miscreants resulting loss to the Govt. to the tune of Rs. 2,51,000/-.

2. The official was charge sheeted under Rule-14 of CCS(CCA) Rules 1965 vide memo of even no dated 3/4/2002. The case was finalized vide memo no. F5-3/2001-2002 (L) dated 20/1/2004 with imposition of punishment of reduction of his pay by 5 (Five) stages from Rs. 4800/- to Rs. 4300/- in the Time Scale of pay of Rs. 4000-100-6000/- for the period of 3 (Three) years with effect from 1/2/2004.

3. Now, after considering all the aspects of the cases it is proposed to treat the said period of suspension from 29/10/2001 to 16/7/2003 as Non duty for all purposes under provisions of FR-54.

You are hereby directed to submit representation if any you may ^{wish} with against the proposal within 10 (Ten) days of receipt of this memo failing which the case will be decided ex-parte.

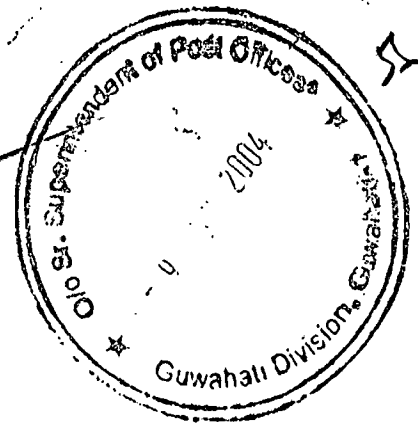

SR. SUPDT OF POST OFFICES
GUWAHATI DIVISION
GUWAHATI - 781 001

To :

Shri Dulal Chakrabarty,
PA, PSD, Guwahati-781 021

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Advocate

-45-
Revised

To

The Senior Supdt. of Post Offices,
Guwahati Division, Guwahati- 781001.

Dated, Bamunimaidan the 4/6-2004.

Sir,

With reference to your proposal communicated under letter No.F.5-3/2001-02 dt. 24-5-2004, I beg to state that my representation in the matter of finalization of the period of suspension from 29-10-2001 to 16-7-2003, was submitted in my earlier application dt. (copy

enclosed) which may kindly be taken into account and favour of your sympathetic consideration in view of the fact that the penalty imposed on me was a harsh one.

That Sir, the proposal for treating the period of my suspension as non-duty for all purposes, if carried into effect, will virtually amount to Break in service warranting recovery of my subsistence allowances already paid for the entire period and therefore it will not meet the ends of justice but will meet the ends of cruelty and personal grudge.

That Sir, in this connection the following provision of rule, is appended below and my fervent request is made for granting me full benefits of service for the period. Sub Rule 8, Period of Suspension to be treated as duty if minor penalty only is imposed.

The undersigned is directed to invite attention to this Department O.M. No.43/56/64-AVD dt. 22-10-64 containing the guidelines for placing Government servant under suspension and to say that these instructions lay down inter-alia that Government servant could be placed under

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contd... 2

Att.ocate

- 2 -

suspension if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The staff side of the Committee of the National Council set up to review the C.C.S (C.C.A) Rules 1965 had suggested that incases where a Government servant against whom an inquiry has been held for the imposition of a ~~xxx~~ major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and ~~xxx~~ allowances paid for suspension period. Government have accepted this suggestion of the staff side. Accordingly where departmental proceedings against a suspended employee for the imposition of a major penalty finally ~~is~~ end with the imposition of a minor penalty the suspension can be said to be wholly unjustified in terms of FR-54B and the employee concerned should, therefore be paid full pay and allowances for the period of suspension by passing a suitable order under FR-54B.

Yours faithfully,

Dulal Chakravorty

(Dulal Chakravorty)
P.A. P.S.D. Guwahati-781021.

DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL
ASSAM CIRCLE: GUWAHATI:781001.

No.Staff-9-36/2003
Dated the 20th December'2004

A disciplinary proceeding under Rule-14 of CCS(CCA) Rules, 1965 was drawn against Shri Dulal Chakraborty, the then PA, NSC/KVP discharge Counter, Guwahati GPO (now PA Postal Store Depot, Guwahati) under SSPOs, Guwahati Division, Guwahati Memo No. F5-3/2001-2002 dated 3.4.2002. The Statement of imputation of misconduct or misbehaviour containing the article of charge, list of documents by which and list of witnesses by whom the article of charge was proposed to be sustained was also enclosed therewith. The said Shri Chakraborty was given an opportunity to submit a written statement of defence and also to state whether he desires to be heard in person within 10(ten) days of the receipt of the aforesaid memorandum.

2. The article of charge framed against said Shri Chakraborty in brief, is as under:

Article - 1

" Shri Dulal Chakraborty while working as PA, NSC/KVP discharge counter of Guwahati GPO on 29.10.2001 took a sum of Rs.2,51,000/- (Rupees two lakhs fifty one thousand) only as advance from Head Treasurer, Guwahati GPO and stated to have been kept inside the Iron chest of his counter and went the record room leaving the Iron chest unattended which was lifted away by some miscreants resulting loss to the Govt to the tune of Rs.2,51,000.00. By his above act, the said Shri Dulal Chakraborty is considered to have failed to maintain absolute integrity and devotion to duty as required under Rule-3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964 which are tantamount to unbecoming of a Govt. Servant, thereby he had violated the provision of Rule- 3(i)(iii) of the CCS(Conduct) Rules,1964 "

3. On receipt of the Memo of charge the said Shri Chakraborty submitted a representation totally denying the charge leveled against him and desired to be heard in person. Therefore, the disciplinary authority appointed an Inquiry authority to inquire into the case. The Inquiring authority after having completed the oral inquiry submitted his inquiry report with the findings that the charge framed against said Shri Chakraborty is proved beyond any doubt. The Disciplinary authority served a copy of the inquiry report on the appellant with direction to submit his written defence representation if any against the Inquiry report. Shri Dulal Chakraborty submitted his written defence representation on 20.12.2003. The Disciplinary authority after going through the defence representation of the appellant and the records of disciplinary proceedings passed the punishment order, No. F5-3/2001-2002(L) dated 20.1.2004 imposing the penalty of reduction of pay of said Shri Dulal Chakraborty by 5(five) stages from Rs.4800/- to Rs.4300/- in the time scale of pay of Rs.4000-100-6000/- for a period of 3(three) years w.e.f. 1.2.2004 with further direction that he will not earn increments of pay during the period of reduction and on expiry of the period of

Recd on
24-12-04

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Advocate

reduction and on expiry of the period of reduction it will not have the effect of postponing his future increments of pay. The punishment order dated 20.1.2004 was received by Shri Chakraborty on 22.1.2004.

4. As per the provision of Rule-25 of CCS(CCA) Rules, 1965 the appeals are required to be preferred within a period of 45 (forty five days) from the date on which a copy of the order appealed against is delivered to the appellant. The present appeal dated 11.3.2004 was received in the Circle Office on 15.3.2004. It is submitted beyond the prescribed time limit of 45 days from the date of receipt of the punishment order and the appellant has not explained any reason for such delay and he prays for condonation of the delay. This clearly shows that the appellant was very much careless and negligent to understand the criticality of the time limit prescribed for submission of appeal. Such type of casual attitude towards such an important matter involving his own interest reflects his nature and attitude and I term the non submission of the appeal well in time as careless act of the appellant and he does not merit any relaxation of rules in this matter. In view of the above discussion, I dispose it of with the following order.

ORDER

I, M. R. Pania, Director of Postal Services (HQ) Assam Circle, Guwahati and the Appellate Authority in exercise of Power conferred in Rule-25 of CCS(CCA) Rules, 1965 reject this appeal as "time barred".

(M. R. Pania)

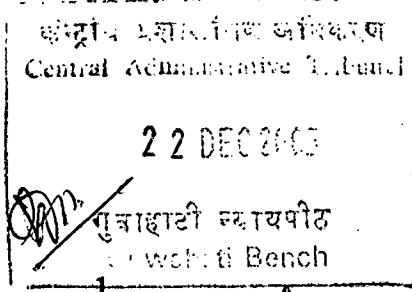
Director of Postal Services(HQ)
Assam Circle,Guwahati:781001.

Copy to:

1. Shri Dulal Chakraborty, PA PSD,Guwahati (Through Supdt PSD/GH)
2. The Sr. Supdt. of POs, Guwahati Divn. Guwahati:781001 w.r.t. his No.F5-3/2001-02 dated 5.7.2004 Service Boom, CR file and the Disc. case file of the official are returned herewith.
3. The Supdt. PSD, Guwahati. A copy of the Appellate Order for the appellant is sent herewith for affecting delivery under receipt and forwarding the signed receipt/ acknowledgement to Circle Office for record.
- 4-5. PF & CR file of the official (through SSP, Guwahati)
- 6-7. Office copy/Spare.

(B. Radhika Chakravarthy)

Asstt. Postmaster General(Staff)
For Chief PMG, Assam Circle, Guwahati.



which was finalized on 20.1.2004 by awarding the punishment of reduction of pay by 5 (five) stages FROM Rs. 4800/- to Rs. 4300/- for 3 (three) years wef 1.2.2004.

The applicant preferred appeal to the DPS (HQ), O/O CPMG, Assam Circle, Guwahati-781001 against the SSOPs/ Guwahati punishment order stated above. The punishment order of the SSPOs/GH dated 20.1.2004 was received by the applicant on 22.1.2004 but submitted his appeal on 11.3.2004 i.e. after expiry of the time limit of 45 days. The DPS (HQ), O/O CPMG, Assam Circle, Guwahati rejected the appeal on 20.12.2004 as TIME BARRED.

- 3) That with regard to the statement made in paragraph 1 of the OA, the respondents beg to state that the penalty of reduction of Pay by 5 stages for a period of 3 years wef 1.2.2004 in respect of the applicant was imposed vide Sr Supdt of Post Offices, Guwahati Division, Guwahati-781001 memo No. F5-3/2001-02 (L) dated 20.1.2004 as a result of Inquiry under Rule 14 of CCS (CCA) Rules, 1965. The inquiry Officer, Shri B. K. Sinha, DPM-I, Guwahati GPO, after conclusion of detailed inquiry, submitted his report on 1.12.2003 with the findings that all the articles of charges framed against the applicant has been proved beyond any shadow of doubt. The Sr Supdt of Post Offices has gone through the IO's report, the representation submitted by the applicant as above. Therefore, as the punishment was imposed following prescribed departmental rules and regulation as well as in the spirit of Rule 14 of CCS (CCA) Rules, 1965, it is not liable to be quashed.

Again as the final punishment order was passed as per Rule 14 CCS (CCA) Rules, 1965 the suspension order was wholly justified and accordingly suspension order was treated as non-duty vide SSP/GH memo no. F5-3/2001-01 dated 24/21.5.2004.

Again the punishment order was received by the applicant on 22.1.2004 and the Appeal against the punishment order was submitted by the applicant on 22.1.2004 and the Appeal against the punishment order was submitted by the applicant on 11.3.2004 which was received by the SSP/GH on 15.3.2004 i.e. beyond 45 days limit as stipulated in Rule 25 of CCS (CCA) Rules, 1965. Therefore, the appeal was rejected by the DPS (HQ) as time barred. As it is a valid order as per CCS (CCA) Rules, 1965, it is not liable to be quashed.

SURESH CHANDRA DAS.
वरिष्ठ जमीदार, डाकघर
गुवाहाटी डिवीजन, गुवाहाटी 781 001.
Sr. J. M. D. of Post Offices
Guwahati Division, Guwahati-781001

- 4) That with regard to the statement made in paragraph 2, 3 and 4.1 of the OA, the respondents beg to offer no comment on those.
- 5) That with regard to the statement made in paragraph 4.2 of the OA, the respondents while denying the contentions made therein beg to state that the applicant himself admitted that the iron chest containing Rs. 2,51,000/- was lost from his custody i.e. lifted away by some miscreants while the applicant had gone to collect the records. Such careless act on his part will not in anyway absolves him from the responsibility of loss of Govt. money. Leaving of huge cash unguarded is a serious misconduct on his part for which he deserves exemplary punishment and therefore punished.
- 6) That with regard to the statement made in paragraph 4.3 of the OA, the respondents beg to state that as the Iron Chest containing the amount was lost his custody due to his carelessness, the case was reported to police the and there and the Police took him to the custody. As he was detained in custody more than 48 hrs, he was placed under suspension vide order dated 31.10.2001.
- 7) That with regard to the statement made in paragraph 4.4 of the OA, the respondents beg to state that the charges were framed against the applicant under Rule 14 of CCS (CCA) Rules, 1965 on the basis of the facts and documents as he as found solely responsible for the theft of the Iron Chest containing cash Rs. 2,51,000/-. Before leaving the Iron Chest, had he asked any other staff available there to keep watch over the Iron Chest, the miscreants could have not been able to take away the same causing great loss to the Department. The appellant was served with a memo of charges on 13.4.2002 to submit a written statement of his defense, as per Rule 14 (4) of CCA (CCA) Rules, 1965 and not the show cause notice as mentioned in the OA (Anx-2 of the OA).

No charges of miscreants of Govt. money was framed against the applicant as the amount of Rs. 2,51,000/- was taken by somebody else due to his negligence, as admitted by himself and not misappropriate by him.

Smt. Jyoti Devi
 श्रीमती ज्योती देवी
 गुवाहाटी-781001.
 Sr. Superintendent of Post Offices
 Guwahati Division, Guwahati-781001

- 8) That with regard to the statement made in paragraph 4.5 of the OA, the respondents beg to state that on receipt of the said memo the applicant submitted an application 11.4.2002 denying all the charges framed against him and desiring to be heard in person. Therefore, separate Inquiry Officer and Presenting Officer were appointed as stipulated under sub-rule-2 and sub-rule 5 (c) respectively of Rule 14 of CCS (CCA) Rules, 1965.

A copy of the application-dated 11.4.2002
is annexed herewith and marked as
Annexure-R 1

- 9) That with regard to the statement made in paragraph 4.6 of the OA, the respondents beg to state that there is no link between the Police case and the Departmental case. The disciplinary case was instituted mainly to confirm some misconduct on the part of the applicant committed during performance of his duty as a Govt. servant, but the Police case deals only to detect the miscreants committing the mischief like theft etc. therefore both Police case and Departmental Inquiry have got separate identity. So. The Disciplinary case cannot be closed or dropped merely on the ground that the Police Authority had submitted Final Report in the Police case.
- 10) That with regard to the statement made in paragraph 4.7 of the OA, the respondents while denying the contentions made therein beg to state that the representation submitted by the applicant for revocation of suspension order was duly considered by the competent authority and his suspension order was revoked, as prolonged suspension was not advisable as per rule. It is not a fact that the applicant's suspension order was revoked consequent on submission of final report by the Police in his case as no such mention was made by the SSP/GH in the said revocation order.
- 11) That with regard to the statement made in paragraph 4.8 of the OA, the respondents beg to state that the Inquiry report of the Inquiry Authority was sent to the applicant for submission of written representation against the report, if any, as per sub-rule (2) of Rule 15 of CCS (CCA) Rules, 1965.

Sureshwar Das.
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मुख्य पोस्टाधिकारी, गुवाहाटी 781 001.
Sr. Asst. Commr. of Post Offices
Guwahati Division, Guwahati-781001

- 12) That with regard to the statement made in paragraph 4.9 of the OA, the respondents while denying the contentions made therein beg to state that the report of the Inquiry Authority is based on documentary as well as oral evidences adduced during the proceedings of the case. It is established without any doubt that the negligence on the part of the applicant led to the monetary loss to the Department. No objection was raised by the applicant during oral inquiry against the Inquiry Officer and therefore, his present allegation against the Inquiry Officer is baseless.
- 13) That with regard to the statement made in paragraph 4.10 of the OA, the respondents beg to state that it has clearly been mentioned by the Disciplinary Authority in the punishment order dated 20.1.2004 (Annexure-8 of the OA) that he has gone through the articles of charges, report of the Inquiry Authority without having any contrary view and came to the conclusion to issue the order of punishment to the applicant.
- 14) That with regard to the statement made in paragraph 4.11 of the OA, the respondents beg to state that the appeal was submitted by the applicant beyond the prescribed limit of 45 days from the date of receipt of the punishment order and the appellant has not explained any reason for such delay and he simply prayed for condonation of delay. This clearly shows that the appellant was very much careless and negligent to understand the criticality of the time limit prescribed for submission of appeal. Such type of casual attitude towards such as important matter authority finds no merit for condonation of delay and rejected his appeal as time-barred.
- 15) That with regard to the statement made in paragraph 4.12 of the OA, the respondents while denying the contentions made therein beg to state that as the inquiry was held for the major penalty and finally awarded the major penalty, the suspension was considered, as it does not attract the provision of FR-54.

Sukieshwar Dal
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गुवाहाटी-781 001.
Sr Insp. in-charge of Post Offices
Guwahati Division, Guwahati-781001

- 16) That with regard to the statement made in paragraph 4.13 of the AO, the respondents beg to state that the representation of the applicant could not be considered as it does not attract the provision of FR-54 in view of the facts and circumstances narrated in the paragraph 15 above.
- 17) That with regard to the statement made paragraph 4.14 of the OA, the respondents while denying the contentions made therein beg to state that the contentions of the applicant is not correct as the order dated 20.12.2004 (Annexure-12 of the OA) is the order of the Appellate Authority and not charge-sheet.
- 18) That with regard to the statement made in paragraph 4.15 of the OA, the respondents beg to deny the contentions made therein. The charge sheet under Rule-14 of CCS (CCA), Rules, 1965 was rightly framed against the applicant taking into consideration of all aspects of this case. An independent inquiry was held and the applicant was offered reasonable opportunity to defend his case. No objection was raised by the applicant during oral inquiry regarding biasness on the part of the Inquiring Authority or no lacuna of proceeding also pointed out by him during the said inquiry. The Inquiring Authority also submitted his inquiry report proving all the charges framed against the applicant. Therefore, the charges framed against the applicant cannot be termed as baseless. The procedure and formalities narrated by the applicant in this para is nothing but his after-thought as the basic fact of loss of Govt. cash securely at his own custody. He also did not ask any other staff to keep watch over the money, which led to the monetary loss to the Department to the tune of Rs. 2,51,000/-.
- 19) That with regard to the statement made in paragraph 4.16 of the OA, the respondents while denying the contentions made therein beg to state that it is very much clear from the wordings of the punishment order that it was imposed under Rule 11 (5) of CCS (CCA) Rules, 1965 which constitutes a major penalty. As the major penalty was imposed for Rule 14 charge, the question of treating the period of suspension as duty does not arise.
- 20) That with regard to the statement made in paragraph 4.17 of the OA, the respondents deny the contentions made by the applicant. There is no violation of

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 Sr. Insp. in-charge of Post Offices
 Guwahati Division, Guwahati-781001

any statutory rules by treating the suspension period as non-duty in view of what has been discussed above.

- 21) That with regard to the statement made in paragraph 4.18 of the AO, the respondents deny the contentions made by the applicant. No sufficient grounds for condonation of delay was put forward by the applicant, the appellant authority was unable to condone the delay in submission of the appeal.
- 22) That with regard to the statement made in paragraph 4.19 of the OA, the respondents most humble beg to submit that the punishment order issued on 21.5.12004 and order dated 21.5.2004 are absolute and not liable to be set aside.
- 23) That with regard to the statement made in paragraph 5.1 of the OA, the respondents beg to submit that in view of the discussion made in foregoing paras the order dated 20.1.2004, 21.5.2004 and 20.12.2004 are valid and not liable to be set aside.
- 24) That with regard to the statement made in paragraph 5.2 of the OA, the respondents while denying the contentions made therein beg to state that as the charges were framed against the applicant on the basis of oral and documentary evidence, this cannot be termed as perverse one. There is no such case of failure on the part of the respondent authorities, which may vitiate the proceedings.
- 25) That with regard to the statement made in paragraph 5.3 of the OA, the respondents deny the contentions made therein. No major penalty was imposed for Rule 14 charges as contemplated by the applicant. The penalty was imposed under major penalty and therefore, the question of treating the suspension period as duty does not arise., since the punishment constitutes a major penalty in terms of Rule-11 of CCS (CCA) Rules, 1965 (copy enclosed).
- 26) That with regard to the statement made in paragraph 5.4 of the OA, the respondents deny the contentions made therein. There is glaring proof of delayed submission of the appeal with no reason for delay. The appellate

Smt. Jyoti Das
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 गुवाहाटी पोस्ट, गुवाहाटी 781 001.
 Sr. Superintendent of Post Offices
 Guwahati Division, Guwahati-781001

authority must be fed with reason for delay otherwise it is not automatic that he can condone the delay.

- 27) That with regard to the statement made in paragraph 5.5 of the AO, the respondents beg to state that the punishment imposed was very much deserving by the applicant for the offence committed by him by leading the Govt. to the monetary loss.
- 28) That with regard to the statement made in paragraph 5.6 of the OA, the respondents deny the contentions made thereof. The departmental proceeding were drawn as per CCS (CCA) Rules, 1965, these are very much legal and not liable to be set aside.
- 29) That with regard to the statement made in paragraph 5.7 of the AO, the respondents beg to state that the criminal case and Departmental proceedings have got separate identity and therefore the criminal proceeding may not attract the provision of Departmental proceedings.
- 30) That with regard to the statement made in paragraph 6 and 7 of the OA, the respondents beg to offer no comment.
- 31) That with regard to the statement made in paragraph 8 of the OA, the respondents beg to deny the statements made therein. No relief is admissible to the applicant in this case in view of the statements made in the foregoing paras and therefore, the OA itself is liable to be dismissed with cost.

Smt/REKHA Deka
 স্মি.প. অ.দেবী ডেকা
 মহাশয়ী, গুৱাহাটী ৭৮১০০১.
 Sr. Superintendent of Post Offices
 Guwahati Division, Guwahati-781001

VERIFICATION

I Shri Sukleswar Das,
 aged about 60 years at present working as
SEP/64x

....., who is one of the respondent and taking steps in this case, being
 duly authorized and competent to sign this verification, do hereby solemnly
 affirm and state that the statement made in paragraph
1 are true
 to my knowledge and belief, those made in paragraph
2 to 31 being matter of records, are
 true to my information derived there from and the rest are my humble
 submission before this Humble Tribunal. I have not suppressed any material
 fact.

And I sign this verification this 20th day of Dec 2005 at Guwahati

Sukleswar Das,
 ब्रिज अधीक्षक, डाकघर
 गुवाहाटी-781 001.
 Sr. Superintendent of Post Offices
 Guwahati Division, Guwahati-781001

ANNEX-1

10 -

Annexure - P1

19

To

The Senior Superintendent of Post Offices,
Guwahati Division, Guwahati- 781001

Dated at Guwahati the 11/4/2002

Sir,

With reference to your office memo No. PS/3/2001-02
dtd. 3/4/2002 I beg to state that I have totally denied the
charges and also request to allow me to hear the case in
person.

With regards.

Yours faithfully

Dulal Chakraborty

(Dulal Chakraborty)

P. N. G. H. C. P. O.

11-4-2002